



Enforcement Alert

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EPA Steps Up Enforcement of Diesel, Gasoline Nonroad Engine Imports

Like Automobiles, the Law Requires Engines to Meet Federal Emission Standards

The Clean Air Act requires that nonroad engines imported into the United States display labels certi-

fying that they meet federal emission standards.

U.S. Environmental Protection Agency (EPA) investigations at several U.S. ports, conducted in cooperation with the U.S. Customs Service, suggest that a number of imported engines fail to meet these labeling requirements, and a subset may not meet emission standards. These "gray market" engines undermine our nation's air quality goals and put law-abiding equipment dealers at a competitive disadvantage. Accordingly, the Agency is working with the U.S. Customs Service to increase inspections at all ports, and to take enforcement action against violators.

Since Jan. 1, 1996, EPA has been regulating certain nonroad diesel and gasoline engines in accordance with the Clean Air Act and the regulations at 40 C.F.R. Parts 89, 90 and 91.

"Nonroad" is a term that covers a diverse collection of engines and equipment. Also referred to as "off-road" or "off-highway," the nonroad category includes lawn and garden equipment, outdoor power equipment, recreational equipment, farm equipment, construction equipment, marine engines and locomotives.

Like automobiles, regulated nonroad

engines must be covered by an EPA-issued Certificate of Conformity. A label confirming the engine meets nonroad emission standards must be affixed to the engine and be readily visible (see sample label, Page 2).

Emissions from nonroad diesel engines contribute approximately 10 percent of total nationwide emissions of nitrogen oxides (NO_x). NO_x reacts with

About Enforcement Alert

"Enforcement Alert" is published periodically by the Office of Regulatory Enforcement to inform and educate the public and regulated community of important environmental enforcement issues, recent trends and significant enforcement actions.

This information should help the regulated community anticipate and prevent violations of federal environmental law that could otherwise lead to enforcement action. Reproduction and wide dissemination of this newsletter is encouraged.

See Page 4 for useful compliance assistance resources.

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Federal Nonroad Engine Requirements:

- Regulated engines must be covered by a Certificate of Conformity certifying the engine to be in compliance with federal emission standards.
- EPA emission label must be affixed to engine and be readily visible.
- If imported, EPA Declaration Form 3520-21 must be properly completed.

— 40 C.F.R. Parts 89, 90 and 91, and 19 C.F.R Part 12.74

hydrocarbons in the atmosphere to form urban ozone, or smog. EPA believes this percentage is even higher in many U.S. cities with air quality problems. By 2010, under the nonroad program, NO_x emissions will be reduced by up to one million tons per year. This is equivalent to removing more than 35 million motor vehicles from the road. Nonroad engines also emit diesel particulate matter (PM). More than 80 percent of diesel

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PM will come from nonroad engines by 2010 nationwide. NO_x, ozone and PM have all been linked to a range of serious respiratory health problems and a variety of adverse environmental effects.

In the past few years, EPA has seen a dramatic increase in the importation of nonconforming nonroad construction and agricultural equipment from overseas. Accordingly, the Agency has taken many steps to inform industry of these relatively new regulations and to respond to the many industry requests for increased enforcement against illegal imports.

In addition to enforcement, EPA activities have included frequent outreach to importers and manufacturers of nonroad diesel and gasoline engines to help ensure compliance. Of note, the Associated Equipment Distributors, EPA, and the U.S. Customs Service hosted a workshop on Nov. 18, 1998, that was attended by more than 100 importers and manufacturers. More outreach is proposed for this year.

Nonroad Engines Subject to the Law

Diesel nonroad engines subject to EPA certification and labeling requirements include those built after certain

Sample Engine Manufacturers Emission Label

IMPORTANT ENGINE INFORMATION

THIS ENGINE CONFORMS TO 1996 MODEL YEAR U.S. EPA REGULATIONS AND THE CALIFORNIA REGULATIONS FOR LARGE NONROAD COMPRESSION IGNITION ENGINES. THIS ENGINE IS CERTIFIED TO OPERATE ON DIESEL FUEL.

WARNING

INJURY MAY RESULT AND WARRANTY IS VOIDED IF FUEL RATE, RPM OR ALTITUDES EXCEED PUBLISHED MAXIMUM VALUES FOR THIS MODEL AND APPLICATION

ENGINE MODEL	SAA6DI70E-2	SERIAL NO.	
ENGINE FAMILY	WKLXL23.2FD1	DISPLACEMENT	23.15 LITERS
EXHAUST EMISSION CONTROL SYSTEM	EM,DI	FIRING ORDER	1-5-3-6-2-4
ADV. LOAD OUTPUT	478 KW (641 HP) 1600 RPM		
VALVE LASH COLD (MM)	IN. 0.40 EX. 1.00	FUEL RATE AT ADV.	368 3MM/STROKE
IDLE SPEED	730 ± 25 rpm	FAMILY EMISSION LIMIT	
INITIAL INJECTION TIMING	16 DEG.BTDC	DATE OF MANUFACTURE	

COMPANY XYZ

dates (see Table 1 below).

Also subject to the law are:

Gasoline nonroad engines less than or equal to 25 horsepower built after Sept. 1, 1997;

Marine gasoline engines such as outboard motors and personal water craft (jet skis and jet boats) built after Jan.1, 1998 and Jan.1, 1999, respectively;

Locomotive engines built after Jan. 1, 2000 ; and

Marine diesel engines more than 50 horsepower and **nonroad gasoline**

engines more than 25 horsepower will become regulated after Jan. 1, 2004.

Importers Must Complete EPA Declaration Form

Importers must complete and retain a EPA Declaration Form 3520-21 for five years and present it to a government official upon demand. Work delegated to a Customs' broker does not shield the importer of record from liability for failure to complete and maintain this form. For copies of EPA Declaration Form 3520-21, call (202) 564-9660.

When a Violation is Detected

First Time Violators: When Customs detects a violation (i.e., an importation of an uncertified engine or an engine that was intended by the manufacturer to be certified and the label is either missing, illegible, or not readily visible)—and if it is the importer's first violation and there are no aggravating

Table 1

DIESEL NONROAD ENGINES REGULATED IF BUILT AFTER:	ENGINE HORSEPOWER RANGE
January 1, 1996	175 to 750 horsepower
January 1, 1997	100 to <175 horsepower
January 1, 1998	50 to <100 horsepower
January 1, 1999	25 to <50 horsepower
January 1, 2000	Under 25 horsepower and more than 750 horsepower

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circumstances—the engine is detained and EPA attempts to achieve a settlement within 30 days. Penalties are reduced from the Clean Air Act's maximum penalty of \$27,500 per engine for first-time violators, provided the importer discloses and remedies all prior violations of the regulations.

All uncertified engines must be exported but label violations may be corrected once EPA determines that the engine is certified. When uncertified engines are imported in equipment, the importer may, in some very limited cases, replace the affected engine (which must be exported) with a certified engine as part of an overall settlement agreement.

Violations identified by the regulated party and disclosed to EPA may qualify for a reduced penalty under EPA's Audit Policy. The Audit Policy allows EPA to seek a reduced gravity-based penalty if the violator promptly discloses and corrects violations. For more information on the policy, visit the Audit Policy Information website at <http://www.epa.gov/oeca/ore/apolguid.html>.

Second-time and Repeat Violators: Second-time violators face seizure of their engines by Customs and the imposition of higher penalties.

Separating Fact from Fiction About Nonroad Engine Requirements

The following is provided to correct some misconceptions and answer questions that importers may have regarding nonroad engine importation requirements.

Fiction: *An uncertified engine having similar or even identical emission characteristics as a certified engine should be able to be imported.*

Fact: Manufacturers may produce

Don't Let This Happen to You...

A **first-time violator** imported a combination of certified but label-deficient engines, and uncertified engines. For these violations, the importer paid \$500 per label-deficient engine and \$1,000 per uncertified engine. In addition, under a settlement agreement with EPA, all uncertified engines were required to be exported to a country other than Canada or Mexico.

A **second-time violator** recently paid a \$2,500 fine for each of his label-deficient engines and \$10,000 per uncertified engines. Also, under a settlement agreement with EPA, he was required to export the uncertified engines out of North America.

engines that are identical to U.S. certified versions but the engines are not intended for the U.S. market. These engines are not certified and may not be imported unless they are produced under an EPA-issued certificate, are properly labeled, have the required EPA emissions warranty, and are subject to EPA audits during manufacturing and potential recall for defects.

Fiction: *An uncertified engine may be imported for export without documenting that the engine is merely making an intermediate stop and without posting of a bond.*

Fact: Uncertified engines that are destined for a foreign country must meet the requirements of 40 C.F.R. Part 89.909 and be so labeled on the engine and the container. In addition, an EPA Declaration Form 3520-21 must be completed and all Customs' bonding requirements met.

Fiction: *A missing EPA label on a nonroad diesel or gasoline engine doesn't matter.*

Fact: If an engine is not properly labeled, the engine is presumed to be uncertified. Therefore, the owner may assume liabilities in importing the engine and experience difficulty in obtaining warranty coverage.

Fiction: *EPA and Customs have*

different rules and enforcement approaches to nonroad regulations.

Fact: EPA and Customs have similar rules and coordinate very closely on their procedures, policies and enforcement actions for violations.

Fiction: *Engine manufacturers will not cooperate with independent importers and will not provide information on whether an engine is certified directly to an individual unless that individual is connected with the federal government.*

Fact: Engine manufacturers and their trade association have committed to EPA to provide such information as quickly as possible to anyone upon request.

EPA's Next Steps

As of Feb. 1, 2000, EPA has initiated more than 125 enforcement actions resulting from the importation of uncertified or improperly labeled engines. At the same time, Customs has seized or detained more than 2,000 engines. EPA also has increased inspections nationwide at dealerships that import and/or sell nonroad engines. Finally,

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Official Business
Penalty for Private Use \$300

Enforcement Alert newsletter

Useful Compliance Assistance Resources

Air Enforcement Division:
<http://www.epa.gov/oeca/ore/aed>

Audit Policy Update:
<http://www.epa.gov/oeca/ore/apolguid.html>

Office of Transportation and Air Quality (formerly Office of Mobile Sources):
<http://www.epa.gov/oms/>

EPA's Nonroad Engine Emissions Control Programs
<http://www.epa.gov/oms/regs/nonroad/f99001.htm>

Nonroad Compression-Ignition Engine Emissions:
<http://www.epa.gov/orcdizux/equip-hd.htm>

Nonroad Spark-Ignition Engine Emissions:
<http://www.epa.gov/oms/equip-ld.htm>

EPA Compliance Assistance Centers:
<http://www.epa.gov/oeca/mfcac.html>

EPA's Small Business Gateway:
<http://www.epa.gov/smallbusiness>

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the Agency is strongly committed to enforcing the regulations and providing compliance assistance to the regulated community so that the public and environment can be protected from the harmful health effects of ozone and particulate matter.

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EPA's Audit Policy and Small Business Policy

EPA has adopted two policies designed to encourage greater compliance with environmental laws and regulations. These policies, "Incentives for Self-Policing, Discovery, Disclosure, Correction and Prevention of Violations" (Au-

dit Policy), and "Policy on Compliance Incentives for Small Businesses" (Small Business Policy), provide incentives to conduct environmental audits by substantially reducing or eliminating penalties for entities that voluntarily discover, disclose, and expeditiously correct violations of environmental law. For more information, see <http://www.epa.gov/oeca/auditpol.html> and <http://www.epa.gov/oeca/smbusi.html>, respectively.

